

WHO PAYS FOR WHAT WHILE A DIVORCE IS PENDING?

Two people cannot live separately more cheaply than they lived together. That's a fact. If you as a couple were barely surviving financially, separating is not likely to make your financial situation easier.

Nonetheless, reality dictates that you must make this new situation work regardless of whether you are the employed spouse or the "up-to-now homemaker" who does not have formal employment.

The period between the filing for a divorce and when the divorce decree is entered is called the "Temporary Orders" period. You may have "official" temporary orders or you and your spouse may have an informal agreement decided on just between the two of you.

Sometimes, the husband and wife will continue to live in the same residence while their divorce is being finalized.

In Harris County, Texas, divorces usually average a length of time of about six months. Of course, the minimum time it takes is 61 days because there is a 60 day waiting period from the day the divorce was filed.

Also, there are many reasons which may cause the divorce to take longer than six months to be completed. Custody disputes or complicated property settlement issues might require additional time for information gathering and analysis. Psychological or financial experts might need to be consulted to assist the Judge in making a decision. If custody is an issue, an attorney will probably be appointed to represent the children.

Needing to consolidate a divorce case with an Attorney General case or transferring a case from one county to another often takes longer than expected.

If the case is being handled in a county other than Harris County, it may not appear on the Court's trial schedule for one or even two years. This does not mean you can't settle it sooner. But, if you do need a trial, you should be aware that you might not get a Court date as soon as you would like.

You should be aware of how long your divorce is expected to take before you decide if you can continue to live together while your case is pending. Even if it won't be for too long, there are stresses associated with remaining in the same home during a divorce, particularly if one of the parties has already moved on to a new relationship.

Even if one of you is willing to keep living together, if one party requests the court to order the other party to move out, the Court will order one of the parties to leave the marital residence.

Keep in mind that sometimes the person who had to move out was given the home back at the end as a part of the final property settlement. For example, a Judge will often let a wife and kids stay in the home while the divorce is pending even though there is no way she will be able to make the mortgage payment and/or pay the home expenses after the divorce is final.

This is also true for vehicles and other personal property items.

Once the parties are living separately, the concepts of "interim spousal support" and "child support" come into play. If you have an "informal agreement," you can pretty much do as you wish.

However, if you have formal Temporary Orders, there are certain things you can expect to happen:

1. If you have kids, there will be a designated dollar amount of child support required to be paid through the Child Support Disbursement Unit. An order to begin automatic deductions from your paycheck (Wage withholding order) will probably be initiated at this time.
2. Temporary custody will be assigned, and a visitation schedule will be put into effect.
3. Health insurance needs to be continued. If the kids have none, it needs to be obtained for them.

4. Both parties are required to complete a Financial Information Sheet which they will exchange with the other party and file with the Court.

a. This schedule includes the incomes of both parties and their anticipated monthly expenses.

5. The Court wants to maintain the “status quo” while the case is pending.

a. Everybody needs a roof over their head, food to eat, and a car to drive (if possible).

b. The marital property needs to be preserved (ie. the mortgage needs to be paid.)

c. The other party needs to pay rent for a home or apartment. (Who actually pays for it will be determined by the Court.)

d. The Court will order a party (or both) to make minimum monthly credit card payments, car payments, insurance, utility payments.

If both parties work, their relative incomes and expenses are addressed and are more easily divided. If one of the parties is unemployed, the temporary burden of their financial support will fall to the other party.

Of course, the Court will tell the non-working party that they must obtain employment. Sometimes “temporary spousal support” is scheduled on a sliding scale which lessens as time goes by. The reason for this is to provide the support which is immediately needed but to do so in a way which encourages the party to get employed as soon as possible.

If a party is receiving child support, this is considered in the calculation of how much additional temporary spousal support they should receive.

When a request for Temporary Orders is filed by one of the parties, a court date is set for this hearing. If you are served with papers for a Temporary Orders Hearing, you should consult an attorney immediately.

Unlike many other divorce attorneys, our firm is very conflict resolution oriented. Regardless of whether we represent the party who requested Temporary Orders or the other spouse who was served with this request, we make it a point to contact the other spouse’s attorney to see if we can come to an agreement without having to go to Court.

This saves our client time and money and sets a good precedent for working towards a final divorce settlement.

If no agreement can be reached, you can be assured that we will arrive at Court fully prepared and armed with all of the facts and information needed to obtain the best result we can for our client.

Please call our firm at 281.550.6650 to arrange for your free divorce consultation. We would be happy to answer any additional questions you might have about how the Temporary Orders period of a divorce works and how the obligations of the individual parties are determined.